

# HOUSE BILL No. 1064

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 36-9.

**Synopsis:** Sewer fees incurred by tenants. Provides that municipal sewage user fees are payable by the person who occupies the real property against which the fees are assessed. Provides that a lien does not attach for user fees assessed against real property occupied by someone other than the owner.

**Effective:** July 1, 2015.

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## Bacon, Smith V

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January 6, 2015, read first time and referred to Committee on Local Government.

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First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## HOUSE BILL No. 1064

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A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 36-9-23-25, AS AMENDED BY P.L.196-2014,  
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2015]: Sec. 25. (a) Subject to section 37 of this chapter, the  
4 municipal legislative body shall, by ordinance, establish just and  
5 equitable fees for the services rendered by the sewage works, and  
6 provide the dates on which the fees are due.  
7 (b) Just and equitable fees are the fees required to maintain the  
8 sewage works in the sound physical and financial condition necessary  
9 to render adequate and efficient service. The fees must be sufficient to:  
10 (1) pay all expenses incidental to the operation of the works,  
11 including legal expenses, maintenance costs, operating charges,  
12 repairs, lease rentals, and interest charges on bonds or other  
13 obligations;  
14 (2) provide the sinking fund required by section 21 of this  
15 chapter;



- (3) provide adequate money to be used as working capital; and
- (4) provide adequate money for improving and replacing the works.

Fees established after notice and hearing under this chapter are presumed to be just and equitable.

(c) Except as otherwise ~~provided in a provision included in an ordinance~~ **allowed** under subsection ~~(f)~~, **(f)(1)**, the fees are payable by the ~~owner of~~ **person occupying** each lot, parcel of real property, or building that:

- (1) is connected with the sewage works by or through any part of the municipal sewer system; or
- (2) uses or is served by the works.

Unless the municipal legislative body finds otherwise, the works are considered to benefit every lot, parcel of real property, or building connected or to be connected with the municipal sewer system as a result of construction work under the contract, and the fees shall be billed **to the person occupying the property, at the address of the property**, and collected accordingly.

(d) The municipal legislative body may use one (1) or more of the following factors to establish the fees:

- (1) A flat charge for each sewer connection.
- (2) The amount of water used on the property.
- (3) The number and size of water outlets on the property.
- (4) The amount, strength, or character of sewage discharged into the sewers.
- (5) The size of sewer connections.
- (6) Whether the property has been or will be required to pay separately for any part of the sewage works.
- (7) Whether the property, although vacant or unimproved, is benefited by a local or lateral sewer because of the availability of that sewer. However, the owner must have been notified, by recorded covenants and restrictions or deed restrictions in the chain of title of the owner's property, that a fee or assessment for sewer availability may be charged, and the fee may reflect only the capital cost of the sewer and not the cost of operation and maintenance of the sewage works.
- (8) The cost of collecting, treating, and disposing of garbage in a sanitary manner, including equipment and wages.
- (9) The amount of money sufficient to compensate the municipality for the property taxes that would be paid on the sewage works if the sewage works were privately owned.
- (10) Any other factors the legislative body considers necessary.



Fees collected under subdivision (8) may be spent for that purpose only after compliance with all provisions of the ordinance authorizing the issuance of the revenue bonds for the sewage works. The board may transfer fees collected in lieu of taxes under subdivision (9) to the general fund of the municipality.

(e) The municipal legislative body may exercise reasonable discretion in adopting different schedules of fees, or making classifications in schedules of fees, based on variations in:

(1) the costs, including capital expenditures, of furnishing services to various classes of users or to various locations; or

(2) the number of users in various locations.

(f) Notwithstanding IC 14-33-5-21, this subsection does not apply to a conservancy district established under IC 14-33 for the collection, treatment, and disposal of sewage and other liquid wastes. In an ordinance adopted under this section, the municipal legislative body ~~may~~ **shall** include ~~one (1) or more~~ of the following provisions with respect to property occupied by someone other than the owner of the property:

(1) That fees for the services rendered by the sewage works to the property are payable by the person occupying the property ~~At the option of the municipal legislative body, the ordinance may include any:~~

(A) requirement for a deposit to ensure payment of the fees by the person occupying the property; or

(B) other requirement to ensure the creditworthiness of the person occupying the property as the account holder or customer with respect to the property;

that the municipal legislative body may lawfully impose:

(2) That the fees for the services rendered by the sewage works to the property are payable by the person occupying the property if ~~one (1) of the following conditions is satisfied:~~

(A) ~~Either unless the property owner or the person occupying the property gives to the general office of the utility written notice that indicates that the person occupying the property~~ **owner** is responsible for paying the fees with respect to the property and requests that the account or other customer or billing records maintained for the property be in the name of the person occupying the property. ~~At the option of the municipal legislative body, the ordinance may provide that a document that:~~

~~(i) is executed by the property owner. and the person occupying the property;~~



(ii) identifies the person occupying the property by name;  
and

(iii) indicates that the person occupying the property is  
responsible for paying the fees assessed by the utility with  
respect to the property;

serves as written notice for purposes of this clause.

(B) The account or other customer or billing records  
maintained by the utility for the property otherwise indicate  
that:

(i) the property is occupied by someone other than the  
owner; and

(ii) the person occupying the property is responsible for  
paying the fees.

(C) The property owner or the person occupying the property  
satisfies any other requirements or conditions that the  
municipal legislative body includes in the ordinance.

(3) (2) That fees assessed against the property for the services  
rendered by the sewage works to the property do not constitute a  
lien against the property, ~~notwithstanding~~ **subject to the notice  
required under** section 32 32(c) of this chapter, and subject to  
any requirements or conditions set forth in the ordinance.

This subsection may not be construed to prohibit a municipal  
legislative body from including in an ordinance adopted under this  
section any other provision that the municipal legislative body  
considers appropriate.

SECTION 2. IC 36-9-23-32, AS AMENDED BY P.L.196-2014,  
SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
JULY 1, 2015]: Sec. 32. (a) Except as otherwise provided in a  
~~provision included in an ordinance under section 25(f)(3)~~ **25(f)(2)** of  
this chapter, fees assessed against real property under this chapter or  
under any statute repealed by IC 19-2-5-30 (repealed September 1,  
1981) constitute a lien against the property assessed. The lien is  
superior to all other liens except tax liens. Except as provided in  
subsections (b) and (c), the lien attaches when notice of the lien is filed  
in the county recorder's office under section 33 of this chapter.

(b) A fee is not enforceable as a lien against a subsequent owner of  
property unless the lien for the fee was recorded with the county  
recorder before the conveyance to the subsequent owner. If the property  
is conveyed before the lien can be filed, the municipality shall notify  
the person who owned the property at the time the fee became payable.  
The notice must inform the person that payment, including penalty fees  
for delinquencies, is due not more than fifteen (15) days after the date



of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(c) Except as otherwise provided in a provision included in an ordinance under section 25(f)(3) of this chapter, A lien attaches **does not attach for user fees assessed** against real property occupied by someone other than the owner **only if the utility notifies the owner not later than twenty (20) days after the time the utility fees become sixty (60) days delinquent. A notice sent to the owner under this subsection must be sent by first class mail or by certified mail; return receipt requested (or an equivalent service permitted under IC 1-1-7-1) to:**

- (1) the owner of record of real property with a single owner; or
- (2) at least one (1) of the owners of real property with multiple owners;

at the last address of the owner for the property as indicated in the records of the county auditor on the date of the notice of the delinquency; or to another address specified by the owner; in a written notice to the utility; at which the owner requests to receive a notice of delinquency under this subsection. The cost of sending notice under this subsection is an administrative cost that may be billed to the owner: **unless the owner has given written notice to the utility under section 25(f)(1) of this chapter that the property owner is responsible for paying the fees with respect to the property. If a lien is filed with the county recorder for user fees assessed against real property occupied by someone other than the owner, the municipality shall release the lien and any delinquent user fees incurred by the person who occupies the property and is responsible for paying the user fees with respect to the property upon receipt of a verified demand in writing from the owner that states that the delinquent fees were not incurred by the owner and that the owner has not been paid by the person occupying the property for the delinquent fees.**

(d) The municipality shall release:

- (1) liens filed with the county recorder after the recorded date of conveyance of the property; and
- (2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner, and that the purchaser has not been paid by the seller for the delinquent fees.

SECTION 3. IC 36-9-23-33, AS AMENDED BY P.L.196-2014, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JULY 1, 2015]: Sec. 33. (a) Subsections (c) through (l) do not apply to unpaid fees and penalties assessed against property occupied by someone other than the property owner if:

(1) the municipal legislative body has adopted an ordinance provision described in section 25(f) of this chapter concerning property occupied by someone other than the property owner;

(2) the ordinance provision described in section 25(f) of this chapter provides that fees assessed against the property for services rendered by the sewage works to the property do not constitute a lien against the property; as described in section 25(f)(3) of this chapter; and

(3) any requirements or conditions:

(A) described in section 25(f)(1) or 25(f)(2) of this chapter; and

(B) included in the ordinance;

**have been satisfied: unless the property owner has given written notice to the utility under section 25(f)(1) of this chapter that the property owner is responsible for paying the fees with respect to the property.**

(b) An officer described in subsection (c) may defer enforcing the collection of unpaid fees and penalties assessed under this chapter until the unpaid fees and penalties have been due and unpaid for at least ninety (90) days. ~~However, in the case of property that is occupied by someone other than the owner, this subsection does not relieve the utility of its duty under section 32(e) of this chapter to notify the owner not later than twenty (20) days after the time user fees become sixty (60) days delinquent.~~

(c) Except as provided in subsection (m), the officer charged with the collection of fees and penalties assessed under this chapter shall enforce their payment. As often as the officer determines is necessary in a calendar year, the officer shall prepare either of the following:

(1) A list of the delinquent fees and penalties that are enforceable under this section, which must include the following:

(A) The name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent.

(B) A description of the premises, as shown by the records of the county auditor.

(C) The amount of the delinquent fees, together with the penalty.

(2) An individual instrument for each lot or parcel of real property on which the fees are delinquent.

(d) The officer shall record a copy of each list or each individual



1 instrument with the county recorder who shall charge a fee for  
2 recording the list or each individual instrument in accordance with the  
3 fee schedule established in IC 36-2-7-10. The officer shall then mail to  
4 each property owner on the list or on an individual instrument a notice  
5 stating that a lien against the owner's property has been recorded.  
6 Except for a county having a consolidated city, a service charge of five  
7 dollars (\$5), which is in addition to the recording fee charged under  
8 this subsection and under subsection (g), shall be added to each  
9 delinquent fee that is recorded.

10 (e) This subsection applies only to a county containing a  
11 consolidated city. Using the lists and instruments prepared under  
12 subsection (c) and recorded under subsection (d), the officer shall  
13 certify to the county auditor, according to a schedule agreed upon by  
14 the county treasurer and the officer, a list of the unpaid liens for  
15 collection with the next cycle's property tax installment. The county  
16 and its officers and employees are not liable for any material error in  
17 the information on the list.

18 (f) This subsection applies to a county not described in subsection  
19 (e). Using the lists and instruments prepared under subsection (c) and  
20 recorded under subsection (d), the officer shall, not later than ten (10)  
21 days after the list or each individual instrument is recorded under  
22 subsection (d), certify to the county auditor a list of the unpaid liens for  
23 collection with the next May installment of property taxes. The county  
24 and its officers and employees are not liable for any material error in  
25 the information on this list.

26 (g) The officer shall release any recorded lien when the delinquent  
27 fees, penalties, service charges, and recording fees have been fully  
28 paid. The county recorder shall charge a fee for releasing the lien in  
29 accordance with IC 36-2-7-10.

30 (h) On receipt of the list under subsection (e) or (f), the county  
31 auditor of each county shall add a fifteen dollar (\$15) certification fee  
32 for each lot or parcel of real property on which fees are delinquent,  
33 which fee is in addition to all other fees and charges. The county  
34 auditor shall immediately enter on the tax duplicate for the  
35 municipality the delinquent fees, penalties, service charges, recording  
36 fees, and certification fees, which are due not later than the due date of  
37 the next cycle's installment of property taxes. The county treasurer shall  
38 then include any unpaid charges for the delinquent fee, penalty, service  
39 charge, recording fee, and certification fee to the owner or owners of  
40 each lot or parcel of property, at the time the next cycle's property tax  
41 installment is billed.

42 (i) After certification of liens under subsection (f), the officer may





not collect or accept delinquent fees, penalties, service charges, recording fees, or certification fees from property owners whose property has been certified to the county auditor. This subsection does not apply to a county containing a consolidated city.

(j) If a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the county treasurer in the same way that delinquent property taxes are collected.

(k) At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the municipality. The county treasurer shall retain the service charges and certification fees that have been collected, and shall deposit them in the county general fund.

(l) Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by section 32(d) of this chapter, files a verified demand with the county auditor.

(m) A board may write off a fee or penalty under subsection (b) that is for less than forty dollars (\$40).

SECTION 4. IC 36-9-25-11, AS AMENDED BY P.L.196-2014, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 11. (a) In connection with its duties, the board may fix fees for the treatment and disposal of sewage and other waste discharged into the sewerage system, collect the fees, and establish and enforce rules governing the furnishing of and payment for sewage treatment and disposal service. The fees must be just and equitable and shall be paid by any user of the sewage works and, except as otherwise ~~provided in an ordinance provision described in~~ **allowed under** subsection ~~(t); (l)(1)~~, the owner of every lot, parcel of real property, or building that is connected with and uses the sewage works of the district by or through any part of the sewerage system. This section applies to ~~owners of~~ property that is partially or wholly exempt from taxation, as well as ~~owners of~~ property subject to full taxation.

(b) The board may change fees from time to time. The fees, together with the taxes levied under this chapter, must at all times be sufficient to produce revenues sufficient to pay operation, maintenance, and administrative expenses, to pay the principal and interest on bonds as they become due and payable, and to provide money for the revolving fund authorized by this chapter.

(c) Fees may not be established until a public hearing has been held



at which all the users of the sewage works and owners of property served or to be served by the works, including interested parties, have had an opportunity to be heard concerning the proposed fees. After introduction of the resolution fixing fees, and before they are finally adopted, notice of the hearing setting forth the proposed schedule of fees shall be given by publication in accordance with IC 5-3-1. After the hearing the resolution establishing fees, either as originally introduced or as amended, shall be passed and put into effect. However, fees related to property that is subject to full taxation do not take effect until they have been approved by ordinance of the municipal legislative body or, in the case of a district described in section 3(b)(2) of this chapter, under section 11.3 of this chapter.

(d) A copy of the schedule of the fees shall be kept on file in the office of the board and must be open to inspection by all interested parties. The fees established for any class of users or property served shall be extended to cover any additional premises thereafter served that fall within the same class, without the necessity of hearing or notice.

(e) A change of fees may be made in the same manner as fees were originally established. However, if a change is made substantially pro rata for all classes of service, hearing or notice is not required, but approval of the change by ordinance of the municipal legislative body is required, and, in the case of a district described in section 3(b)(2) of this chapter, approval under section 11.3 of this chapter is required.

(f) If a fee established is not paid within thirty (30) days after it is due, the board may recover, in a civil action in the name of the municipality, the amount, together with a penalty of ten percent (10%) and a reasonable attorney's fee from:

(1) the delinquent user; or

(2) the owner of the property, ~~subject to any ordinance described in subsection (f):~~ **as allowed under subsection (l)(1).**

(g) Except as otherwise provided in subsection (h), ~~or in an ordinance provision described in subsection (f);~~ fees assessed against real property under this section also constitute a lien against the property assessed. The lien attaches at the time of the filing of the notice of lien in the county recorder's office. The lien is superior to all other liens except tax liens, and shall be enforced and foreclosed in the same manner as is provided for liens under IC 36-9-23-33 and IC 36-9-23-34. **However, if notice of a lien is filed with the county recorder for fees assessed against real property occupied by someone other than the owner, and upon receipt of a verified demand in writing from the owner that states that the delinquent**



1 **fees were not incurred by the owner and that the owner has not**  
 2 **been paid by the person occupying the property for the delinquent**  
 3 **fees, the board shall release the lien and any delinquent fees**  
 4 **incurred by the person who occupies the property and is**  
 5 **responsible for paying the fees with respect to the property.**

6 (h) A fee assessed against real property under this section  
 7 constitutes a lien against the property assessed only when the fee is  
 8 delinquent for no more than three (3) years from the day after the fee  
 9 is due.

10 (i) In addition to the:

11 (1) penalties under subsections (f) and (g); or

12 (2) alternative penalty available under section 11.5 of this  
 13 chapter;

14 a delinquent user may not discharge water into the public sewers and  
 15 may have the property disconnected from the public sewers.

16 (j) The authority to establish a user fee under this section includes  
 17 fees to recover the cost of construction of sewage works from industrial  
 18 users as defined and required under federal statute or rule. Any  
 19 industrial users' cost recovery fees may become a lien upon the real  
 20 property and shall be collected in the manner provided by law. In  
 21 addition, the imposition of the fees, the use of the amounts collected,  
 22 and the criteria for the fees must be consistent with the regulations of  
 23 the federal Environmental Protection Agency.

24 (k) The authority to establish a user fee under this section includes  
 25 fees to recover the costs associated with providing financial assistance  
 26 under section 42 of this chapter. A fee that is:

27 (1) established under this subsection or any other law; and

28 (2) used to provide financial assistance under section 42 of this  
 29 chapter;

30 is considered just and equitable if the project for which the financial  
 31 assistance is provided otherwise complies with the requirements of this  
 32 chapter.

33 (l) For purposes of this subsection, "municipal legislative body"  
 34 refers to the legislative body of each municipality in the district, in the  
 35 case of a district described in section 3(b)(2) of this chapter. This  
 36 subsection does not apply to a conservancy district established under  
 37 IC 14-33 for the collection, treatment, and disposal of sewage and other  
 38 liquid wastes. In an ordinance adopted under this chapter, the  
 39 municipal legislative body ~~may~~ **shall** include ~~one (1) or more of~~  
 40 the following provisions with respect to property occupied by someone  
 41 other than the owner of the property:

42 (1) That fees for the services rendered by the sewerage system to



the property are payable by the person occupying the property At  
the option of the municipal legislative body; the ordinance may  
include any:

(A) requirement for a deposit to ensure payment of the fees by  
the person occupying the property; or

(B) other requirement to ensure the creditworthiness of the  
person occupying the property as the account holder or  
customer with respect to the property;

that the municipal legislative body may lawfully impose.

(2) That the fees for the services rendered by the sewerage system  
to the property are payable by the person occupying the property  
if one (1) of the following conditions is satisfied:

(A) Either ~~unless~~ the property owner or the person occupying  
the property gives to the board written notice that indicates  
that the person occupying the property ~~owner~~ is responsible  
for paying the fees with respect to the property. ~~and requests~~  
that the account or other customer or billing records  
maintained for the property be in the name of the person  
occupying the property. At the option of the municipal  
legislative body, the ordinance may provide that a document  
that:

(i) is executed by the property owner and the person  
occupying the property;

(ii) identifies the person occupying the property by name;  
and

(iii) indicates that the person occupying the property is  
responsible for paying the fees assessed by the board with  
respect to the property;

serves as written notice for purposes of this clause.

(B) The account or other customer or billing records  
maintained by the board for the property otherwise indicate  
that:

(i) the property is occupied by someone other than the  
owner; and

(ii) the person occupying the property is responsible for  
paying the fees.

(C) The property owner or the person occupying the property  
satisfies any other requirements or conditions that the  
municipal legislative body includes in the ordinance.

(3) (2) That fees assessed against the property for the services  
rendered by the sewerage system to the property do not constitute  
a lien against the property, notwithstanding subsection (g), and



1           subject to any requirements or conditions set forth in the  
2           ordinance.  
3       This subsection may not be construed to prohibit a municipal  
4       legislative body from including in an ordinance adopted under this  
5       chapter any other provision that the municipal legislative body  
6       considers appropriate.

